

**COMMISSION ON COMMON OWNERSHIP COMMUNITIES
MONTGOMERY COUNTY, MARYLAND
100 Maryland Avenue, Room 330
Rockville, Maryland 20850**

Olde Potomac Park Community Association,
Complainant

v.

Case #17-11
April 18, 2012

Anne Beckmeyer
Respondent

JUDGMENT BY DEFAULT

(Before Molloy, Caudle, Zajic)

This matter comes before the Commission on Common Ownership Communities pursuant to Sections 10B-8, 9, and 13 of the Montgomery County Code (2010), COMCOR 10B.06.01.03(b), and the Commission's *Default Judgment Procedures*. The hearing panel has reviewed the record in this case, and now makes the following findings of fact, conclusions of law, and orders.

Findings of Fact

1. The Complainant, Olde Potomac Park Community Association (hereinafter, "Association"), is a homeowners association operating under the Maryland Homeowner Association Act pursuant to covenants filed in the land records of Montgomery County, Maryland.
2. The Respondent, Anne Beckmeyer (hereinafter, "Ms. Beckmeyer"), is the owner of a lot that is part of the Association, located at 15713 Ambiance Drive, North Potomac, Maryland. This lot is subject to the Association's governing documents.
3. On May 4, 2011, the Association filed this complaint against Ms. Beckmeyer with the Commission on Common Ownership Communities ("the Commission"). The complaint alleged that Ms. Beckmeyer had installed a gate in her fence and had altered part of the fence by removing boards from it. She made these changes without obtaining approval from the Association. The Association alleged that this conduct was a violation of its governing documents,

and requested that the Commission order Ms. Beckmeyer to restore the fence to its original condition.

4. The complaint further documented that the Association had notified Ms. Beckmeyer of the alleged violations on November 12, 2010, January 4, 2011, and February 10, 2011, without response from her; and that it had, on March 2, 2011, informed Ms. Beckmeyer of her right to a hearing with the Association's board of directors on the matter. Ms. Beckmeyer did not attend that hearing, which was held on April 13, 2011. Subsequently, on May 2, 2011, the Association notified Ms. Beckmeyer that the Board of Directors of the Association voted that Ms. Beckmeyer was in violation of the governing documents. This complaint followed.

5. Article V, Section 1, of the Association's Bylaws state:

No building, fence, wall or other structure shall be commenced, erected or maintained on the property, *nor shall any exterior addition to or change or alteration therein be made*, until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures...by the Board of Directors of the Association. (Emphasis added.)

6. Article V, Section 1(b)(12) specifically includes "any change in the privacy screen on the lot" and Section 1(b)(14) refers specifically to "the construction or installation of fencing." Under Article V, Section 2, the Association has the right of entry onto any lot for the purpose of enforcing the governing documents.

7. On May 5, 2011, the Commission's staff mailed a copy of the complaint, with a cover letter and other information, to Ms. Beckmeyer and instructed her to answer the complaint within 30 days. The cover letter advised Ms. Beckmeyer that if she did not answer the complaint, the Commission could enter a default judgment against her.

7. Ms. Beckmeyer did not answer the complaint within 30 days or at any other time.

8. On July 22, 2011, after the expiration of the 30-day response time, the Commission's staff wrote to the Association to advise it that Ms. Beckmeyer had not answered the complaint and that the Association could move for entry of an order of default against Ms. Beckmeyer pursuant to the Commission's *Default Judgment Procedures*. The staff sent a copy of this letter, and a copy of the *Procedures*, to Ms. Beckmeyer at the same time.

9. On August 12, 2011, the Association filed a request for entry of an order of default, and sent a copy of its request to Ms. Beckmeyer. On August 16, 2011, the staff sent notices to both the Association and to Ms. Beckmeyer informing them that the request for entry of an order of default would be considered by the Commission on September 7, 2011, and advising them of the staff's recommendation that the Commission accept jurisdiction of the complaint and issue the order of default.

10. The Commission voted to take jurisdiction of the complaint and to issue the order of default on September 7, 2011, and the staff mailed the order to Ms. Beckmeyer the next day, by regular and by certified U.S. Mail. Ms. Beckmeyer signed a receipt for the certified mail on September 24, 2011.

11. Ms. Beckmeyer has installed a gate in her fence without permission. She has also altered the appearance of the fence without permission. This fence is a 6-foot tall privacy fence constructed in the "board on board" pattern, in which boards are nailed vertically to the fence crosspieces and the boards alternate on different sides of the fence structure. Ms. Beckmeyer has removed the upper half of the vertical boards on the inner side of the fence so that now it is a combination of "board on board" on the lower portion of the fence and a sort of "picket" pattern on the upper portion of the fence, so that it is no longer a consistent design.

12. The Association alleges that subsequent to the filing of the complaint, Ms. Beckmeyer has continued to alter the fence, and has not removed the gate.

Conclusions of Law

1. The Commission has jurisdiction of this dispute under Section 10B-8 of the Montgomery County Code.

2. The Commission has jurisdiction over the parties to this dispute under Section 10B-8 of the Montgomery County Code and COMCOR 10B.06.01.03(b)(2).

3. The Association's Bylaws prohibit the alteration of the structures on the lot without approval from the Association.

4. Ms. Beckmeyer has installed a gate, and made alterations to her fence, without approval from the Association and is therefore in violation of the governing documents.

ORDER

1. Within 60 days after the date of this order, Ms. Beckmeyer must remove the gate she has installed and restore the entire fence to its original appearance.

2. Within 30 days after the date of this order, Ms. Beckmeyer must reimburse the Association the sum of \$50.00 as its costs in this matter. If she fails to do so, the Association may add this fee to the assessments due and owing from Ms. Beckmeyer and proceed to collect it in any manner authorized by its governing documents or the law.

3. If Ms. Beckmeyer does not restore the fence as ordered, the Association is authorized to enter on the property after giving reasonable advance notice, with or without Ms. Beckmeyer's permission, and to make the necessary changes at Ms. Beckmeyer's cost. The Association may add these costs to the amount owed by Ms. Beckmeyer as assessments, and may collect them in the same manner as it collects assessments, if so authorized by its governing documents and rules, or as allowed by law.

The failure to comply with this order is a violation of the Montgomery County Code and subject to a fine of up to \$500.00 for the initial offense and \$750 for each repeat offense.

Any party aggrieved by this Order may appeal it to the Circuit Court of Montgomery County within 30 days after the date of this order pursuant to the rules of court governing appeals from the decisions of administrative agencies.

Commissioners Caudle and Zajic concur in this decision.

COMMISSION ON COMMON OWNERSHIP COMMUNITIES
FOR MONTGOMERY COUNTY, MARYLAND

By: _____
Elizabeth Molloy, Panel Chair
April 18, 2012

cc: Eric Cooper, Manager